INFORMATION LETTER

Not for Publication — NATIONAL CANNERS ASSOCIATION — For Members Only

No. 602 — Washington, D. C. — May 23, 1936

N. C. A. DIRECTORS MEET

Work Reviewed and Plans for Remainder of the Year Discussed

The spring meeting of the Board of Directors of the National Canners Association was held on Wednesday, May 20, with a large attendance, not only of directors but also of members of the Administrative Council and representatives of state canners' associations.

The Board approved the recommendations for the 1936 budget as reported by the Administrative Council which had met on Tuesday. The remainder of the meeting was devoted largely to a review of the Association's activities since the convention and of plans for the rest of the year, presentation of reports from the Labeling Committee and the Committee on Statistics and Information, and discussion of pending legislation of interest to the industry. The Board approved the week of January 24, 1937, as the time for holding the next annual convention.

An outstanding feature of the meeting was an address by Judge J. Harry Covington of the Association's general counsel, who emphasized the necessity of constructive action to meet new conditions that confront industry and society as a whole, so that progress may be achieved and protection afforded against unsound or ill-planned measures. The work on descriptive labeling, Judge Covington stated, is one example of the opportunity that the canning industry has to meet the desires of the public, and to prevent the recurrence of proposals for ill-conceived, impractical legislation. He strongly urged upon canners that they be realists in studying all current problems, that they clearly recognize the objectives that are to be sought under new conditions, and that they do their part, and a constructive one, in working out a proper program.

The subject of voluntary registration of employes under the provisions of the Social Security Act relating to old age benefits was presented by Mr. Walter White, assistant to the chairman of the National Business Advisory Council, who also described the functions and services of that organization. The question was referred to the executive officers of the Association for consultation with counsel so that the Association may later advise members as to the best course to follow.

Committee Reports

Following the report by Chairman Frank Gerber of the Labeling Committee, the Board approved the inauguration of a service by the Association, available alike to canners, distributors, and label manufacturers, through which they might be informed as to terms to be used on labels in conformance with the descriptive labeling plan.

The Committee on Statistics and Information reported its final revision of the pamphlet on canned peas dealing with canner-grower relations, and outlined its plans for similar studies on other products, including tomatoes, corn, peaches, and pears.

Legislation

Pending legislation of particular interest to canners, including the Copeland bill, the Patman and other price discrimination bills, the Walsh-Healey bill on government contracts, and the Wheeler bill to amend the Federal Trade Commission Act, was reviewed by Mr. H. T. Austern of the Association's counsel. (See Copeland bill, p. 4955.)

The tax bill is to be revised and reported out by the Senate Finance Committee, probably within a week, and will differ widely from the House bill. The undistributed surplus tax is expected to be retained in principle only. The Committee has definitely settled on only a few minor items, however, and it will be several days before the nature of the principal provisions will be known. Of interest to some canners is the change from January 6 to September 21, 1936, of the limit of the period for which refunds will be allowed for tax-paid sugar in exported canned foods.

(Continued on page 4946)

PEA CROP CONDITIONS

Unfavorable Weather Affects the Prospects in a Number of Producing Districts

MAINE.—A severe freeze in Maine on the night of May 8th greatly damaged the pea crop in that state. Peas were four or five inches high at the time. It is expected the crop will recover from the freeze but will be retarded considerably.

NEW YORK.—Moisture and temperature conditions in New York state have been fairly favorable and the pea crop was coming along nicely until May 7th. A heavy freeze damaged the crop very materially, causing leaves to turn black and plants to wither. The extent of the damage could not be estimated very accurately. Although the crop is expected to recover, it will no doubt be late.

PENNSYLVANIA AND NORTHERN MARYLAND.—Pea crop has been coming along fairly well in this section except for a few days of very hot weather and absence of sufficient amount of moisture in surface soil. A good rain fell in this section last Monday night but the pea crop did not respond as expected. The hot weather of early last week has undoubtedly affected the crop much more than previously estimated.

EASTERN SHORE MARYLAND AND DELAWARE.—Unseasonably warm weather together with lack of sufficient moisture has damaged the pea crop in this section very materially. The most optimistic growers in this section are expecting only a fair crop.

VIRGINIA.—Pea packing started in Virginia on May 16th. Quality is recorded to be very good and yields on the first few acres packed were fair. Unseasonably warm weather,

however, has damaged the crop very severely, and it is expected that yields will not be more than about half of average.

OHIO.—Peas in Ohio are reported to be only fair. Unseasonably warm weather has caused some damage.

WISCONSIN.—Although planting in northern Wisconsin was very late, reports from various sections of that state indicate that on the average the Wisconsin crop is coming along about as well as could be expected. There is little or no aphis infestation on peas as yet, but the alfalfa fields are reported to be heavily infested with aphis.

WASHINGTON.—Pea crop in Washington is not far enough along to enable one to make any estimate of the probable crop. There is considerable increase in acreage.

UTAH.—Pea crop in Utah is progressing fairly satisfactorily, but the stands are reported to be very light.

The acreage planted to green peas for manufacture is 3.6 per cent below last year's planted acreage, according to the May 22nd estimate of the U. S. Bureau of Agricultural Economics.

N. C. A. DIRECTORS MEET

(Continued from page 4945)

The Copeland food and drug bill has been ordered to be reported out with many amendments, the nature of which are not known exactly as they have not been written in final form. It is generally understood, however, that some compromise has been agreed upon as to the control of advertising so that the Federal Trade Commission would be in the picture, possibly handling newspaper and radio advertising, instead of leaving control entirely in the hands of the Food and Drug Administration as proposed in the bill as it passed the Senate. The Bailey single-seizure amendment has been modified, according to what seems to be well-founded rumor, leaving the procedure just as it has been under the present law.

None of the bills to amend the anti-trust laws has passed, and the Patman bill in some form is the only one that has any chance of getting through. Minus the anti-basing-point and the customer classification provisions it may be brought up and passed within ten days. Whether that would give the conferees time before adjournment to agree on some satisfactory compromise as between the Patman and Robinson bills, no one can say. The Wheeler Federal Trade Commission, the Wheeler anti-basing-point, and the Tydings fair-trade bills seem to have no chance now.

Of the bills designed to perpetuate some features of the N.R.A., only the Healey-Walsh government contracts bill is still alive. Although tabled some time ago by the House Judiciary Committee, an agreement has been reached to have it reconsidered by the Committee. This agreement resulted from pressure growing out of the Guffey Act decision. There is no way of telling whether the pressure is sufficient to get the bill through the House and through conference before adjournment.

General Activities

While the Association's work is so organized that its various activities naturally fall within the scope of some one of its departments or divisions, there is a considerable amount of work, general in its character but highly important, that is handled by no one division or department.

In the field of legislation, the Association has kept the membership currently informed through the weekly LETTER, and also by correspondence, with regard to bills pending in Congress that are of both direct and indirect interest to canners.

On two proposed pieces of legislation statements have been submitted to the appropriate Congressional committee on behalf of the industry: First, on the Healey-Walsh bill on governmental contracts; second, on the tax bill, which is now being considered by the Senate Finance Committee.

As was announced in the INFORMATION LETTER for March 7th, the Senate special committee to investigate lobbying activities, generally called the Black Committee, made an examination of the records and correspondence of the Association. Nothing further than this examination has taken place.

Upon the subject of labeling, there has been no considerable activity aside from the distribution to canners, label manufacturers and others of the revised pamphlet giving the descriptive terms endorsed by the Association at the annual convention, and the preparations made by the laboratories for the experimental pack of corn, peas, tomatoes and green and wax beans.

The service that the Association has given its members with respect to the Social Security program is an excellent illustration of the work that does not fall to any one department. At the time of the convention the Association distributed to all members a comprehensive bulletin on the program, in which were incorporated forms for keeping required records, as well as a detailed analysis of the provisions of the Social Security Act. Since that time the Association has kept members currently informed on developments in the social security field, through a series of articles in our weekly LETTER giving information as to state legislation, federal regulations, etc. When the federal regulations were issued, the Association not only sent copies to all members but also published a series of articles prepared by counsel analyzing and explaining the provisions in these regulations. Naturally, individual members have had questions to ask about various features of the program, and through our counsel the Association has been able to furnish them both information and advice.

Information Letter

The INFORMATION LETTER is the medium that the Association uses to get to its members information from various sources which it is believed will be useful, including news relating to Association affairs and activities.

Subscribers to a newspaper, trade journal, or magazine usually let the publisher know quite promptly whether the publication suits them. They either pay up or refuse to renew their subscription. The situation is different with our INFORMATION LETTER. It goes to all members as part of the Association's service, and for that reason there are no circulation ups and downs that measure satisfaction or dissatisfaction.

Besides, there has been some reason for thinking that

the weekly LETTER is not read. The chief ground for this is the fact that quite frequently we get requests for information on matters that have been explained or fully discussed in the LETTER. In fact, in many cases we find a question can best be answered by sending the inquirer a copy of the INFORMATION LETTER that he is supposed to have received and read.

So it was decided to send out to the mailing list the simplest sort of questionnaire that could be devised—a postal card addressed to the Association which required only check marks and a signature. Over 500 readers of the INFORMATION LETTER checked the subjects in which they are most interested, and a considerable number added comments or suggestions that will be quite helpful. The card listed 13 general topics. Heading the list as checked by the readers is the subject of food laws and regulations. Over 86 per cent of the readers checked this item. At the bottom of the list is the subject of stocks of milk, salmon and cold storage fruit, in which 30 per cent of the readers indicated interest. The response shows that 80 per cent or more of the readers want items on food laws and regulations, pack statistics, crop prospects and forecasts, and Congress and legislation. From 50 to 65 per cent want items on social security, weather, raw products, trend of retail sales, Federal Trade Commission activities, and the A.A.A. Nearly half the readers are interested in the weekly figures on shipments of fresh fruits and vegetables. About 30 per cent are interested in foreign trade, and in stocks of milk, salmon, and cold storage fruit.

The editor of a publication has to decide not only what topics to include, but how often to publish something on these topics, and how much space to give them. Sometimes this isn't at all hard to decide. There may be nothing new on the subjects, or something may be available only at intervals. For example, only 30 per cent replying to the questionnaire indicated interest in the stocks of milk, salmon, and cold storage fruit, but as it happens these figures are available only once a month, and they take only a relatively small space.

An effort will be made, of course, to meet the wishes of the readers of the INFORMATION LETTER, but where these wishes conflict, about all we can do is steer a middle course. Probably the wisest thing will be to make the LETTER emulate a Brunswick Stew, which, according to one of America's epicurean humorists, is the best thing in the world, because there is a little bit of everything in it.

Investigation of Consumer Complaints

Up to May 1st this year, 904 new claims have been referred to the Association as compared with 715 a year ago, an increase of 28 per cent. There are pending, in the hands of our attorneys, 422 suits; no payments have been made by the Trustees so far this year from the Protective Fund established in 1932.

This branch of the Association service was started in 1909 and has been built up and organized from years of experience. A complaint may be reported to us by a member direct or by a distributor of one of our member's products. Occasionally we first receive information of a case of illness or injury attributed to canned food through our newspaper clipping service.

The first step is to arrange for an investigation, upon which the success in handling these claims very largely depends. The investigations are made by men who have had experience and special training for the work. In cases where serious illness or injury is alleged, we have available the services of medical experts who are competent to make physical examinations and testify in court, if necessary.

The investigator interviews not only the person making the complaint, but also other members of the family who may have first hand knowledge regarding it. He also calls upon the grocer from whom the product was purchased and upon the attending physician. The persons interviewed are requested to make signed statements covering all the pertinent facts and the investigator secures samples of the food, if available, and concludes his report with a statement of his opinion.

These investigations are not carried out in a hit or miss fashion. Investigators are guided in their work by definite instructions and the signed statements secured are based on questionnaire forms which have been revised from time to time.

The reports are sent to this office for review and a copy is sent to the canner with such comments as appear necessary and also to the distributor if the canner requests it. If it appears likely that legal action will follow, we request the canner to inform us whether he desires us to defend the suit and will assume responsibility for the judgment in the event of an adverse verdict. If the canner decides that the claim is one which should be settled, the Association is willing to undertake to make a settlement on a reasonable basis, bearing in mind that the claimant, even if acting in good faith, should not expect to make a profit out of the claim.

If no settlement is made and suit is filed, the case is turned over to our local attorneys, if the canner requests us to defend the suit. The Association and our general counsel are ready to assist the attorneys in preparing the defense, and to furnish them, upon request, a digest of court decisions in food cases, prepared and revised from time to time by our general counsel. Expert scientific and medical advice and testimony are also furnished if requested by the attorneys.

Considerable time of several members of the Research Laboratory staff is taken up in the examination of food samples secured by the investigators, and in preparing for and giving expert testimony at the trial of cases. The research work on food poisoning which has been carried on at Harvard, California and Chicago Universities under grants from this Association and the processing studies undertaken by the Association's Research Laboratories and other laboratories connected with the industry, have been of fundamental importance in this connection.

Rules Governing Service

Our general counsel, in drawing up the rules governing this service, included the provision that the Association should undertake to defend a suit only if the canner would assume responsibility for any judgment. The Board may be interested in the reasons for including that provision.

The large majority of suits are brought against the distributor, rather than against the canner, and in our experience the distributor is not generally willing to turn the

defense over to us unless the canner will assume such responsibility. The Association, as you know, does not assume any responsibility for the outcome of the suits it defends, nor for any judgments awarded or settlements.

Under the law, the canner is responsible to the distributor for the wholesomeness and purity of his products. Unless the canner to whom the complaint is reported will assume this responsibility, the Association may be called upon to defend suits which do not properly come within the scope of its service.

It is the policy of Association members generally to stand back of their products, protect their customers and retain their good will. In our experience there have been very few instances where a claim of illness or injury could be attributed to any fault or negligence on the part of the distributor in handling the product in question.

Combatting Unjustifiable Claims

Several years ago the Board of Directors authorized the executive officers of the Association to cooperate with other organizations or associations, to such an extent as they felt advisable, in combatting unjustified claims involving illness or injury from food products. This involves an important question of Association policy, especially in view of a resolution recently adopted by a state canners association authorizing the appointment of a committee to work out a plan, in cooperation with the National Canners Association, by which prosecution of persons involved in fraudulent claims may be brought about.

The idea embodied in that resolution is one that has been considered by the Association on a number of occasions and we have consulted our general counsel and our attorneys in other localities regarding it. We are convinced that this is a matter in which the Association should take no part, except on the advice of its counsel. It should be left to local bar associations, insurance companies and civic organizations to handle. However, it is felt that it would be proper for the Association, when called upon to do so, to furnish such information as its files may contain to responsible parties who are in sympathy with our work. Attempts have been and are being made, with more or less success, by bar associations to secure disbarment or even more drastic punishment for lawyers engaged in claim racketeering, but it is very difficult to prove fraud even though it may be strongly suspected. Several attempts have been made to have courts take action against claimants for perjury.

The most effective method of securing information regarding people who make a business out of questionable claims is through an index bureau for exchange of information among organizations handling damage claims. The Association has been a member of such an organization, the Central Index Bureau in New York City, for some time and has secured some valuable information through it.

It is believed that cooperation of the Association in this work should be limited, as a rule, to furnishing service in investigating and defending claims involving its members and arranging for exchange of information through a general claim agency such as the Central Index Bureau.

In exceptional instances, the Association might act in an advisory way on scientific and technical questions involved in such claims.

Service to Non-Members

The Association still receives from time to time requests from non-members for service in connection with consumer complaints. In such cases the non-member generally offers to pay for the service and bases his request on the ground that it is for the interest of the entire industry that complaints be investigated and unjust claims be contested. It seems, however, that the long-established policy of limiting this service to complaints involving members' canned products, as provided in the rules governing this service, drawn up by our general counsel in 1929 by authority of the Board of Directors, should be continued.

Service to non-members at certain rates would be contrary to a long-established policy, would probably subject the Association to taxation, and might require an amendment to its charter. Charge to non-members for laboratory service would place the laboratory on a commercial basis and put it in competition with commercial food laboratories.

Research Laboratories

There has been a transition in the scope of the work of the Research Laboratory and similar transitions may be expected in the future because of changed conditions or new conditions that arise. From the beginning of the laboratory the research work has been guided in a measure by service work requested, sometimes by individual members of the Association, but more frequently by service work of a general nature with respect to problems that were widely recognized. Moreover, during the first five years of the laboratory's life attention was directed in a considerable measure to becoming familiar with the conditions of the industry in order to get an understanding of the nature of the questions to which attention should be given.

Beginning with 1918 there came a period in which the attention of the laboratory was largely given to questions that were fundamental from a technological standpoint, and apparently were only remotely connected with service work for individual members, or for the industry as a whole. In this connection may be mentioned especially the series of process studies, beginning with heat penetration and the heat resistance of bacterial spores.

This period gradually merged into the present period and the research work is more directly connected with service problems that arise. It is commonly found more practicable to investigate these problems in connection with an individual canning plant in which difficulty has been experienced, although such problems are usually, if not always, general in their scope, and the results obtained in connection with an individual plant are applicable generally.

Problem of Foreign Materials

The elimination of foreign material, especially insects of various kinds, must always receive the careful attention of all persons having to do with the preparation of agricultural products for human food. This, therefore, is one of the problems to which canners must give careful attention. The kinds of insects occurring in individual raw products vary

from time to time and in different sections of the country. Perhaps the number of kinds of insects, or rather the frequency with which insects are found in raw products, increases somewhat as time goes on. In this connection it is of interest to note the nature of products regarding which the Food and Drug Administration has taken action repeatedly in recent years because of the presence of insects or parts of insects.

First, are the fruits and vegetables in which insects are found of such size that they are readily seen by the naked eye, although they may be hidden in the interior of the fruit or vegetable so that their detection is difficult.

Second, are the products in which very small insects are found, either microscopic or at least so small that they are seen with difficulty by the naked eye, and the presence of which cannot be detected by the ordinary methods of observation heretofore used. Frequently seizures of such products have been made because of the presence of very minute insects, and methods have been developed by which the presence of these insects may be determined more readily. By these methods the raw product may be inspected and rejected if infested by the insects in question. In this connection it should be stated that seizures made by the government of the class of products just mentioned are not by any means limited to canned foods. Many seizures have also been made of the raw products shipped to the fresh fruit market.

In connection with the class of products just considered may be mentioned tomato products made from tomatoes infested by insects large enough to be readily seen, but sometimes difficult to detect in the raw products. The greatest possible care must be taken to eliminate such insects from the raw product. When they are not eliminated they are, of course, broken up into microscopic fragments in the manufacture of the tomato products.

Mention should be made also of some green vegetables which are sometimes infested by very minute insects, such as aphids and thrips. It is altogether probable that such products can be freed from infesting insects of the classes mentioned much more readily during preparation for canning than during the preparation of raw products for the table in the home. At any rate this is a question to which serious attention should be given.

Bacteriological Work

Over the past several years the work of the Bacteriological Laboratory has changed measurably in scope. Formerly the work was in the two categories of "service" and "research." The service work consisted largely in the examination of samples representative of spoilage. The research centered largely on study of characteristics of spoilage bacteria with especial reference to resistance.

At present by far the greater amount of work is on service and so-called "special problems." These special problems in the main represent an extension of the service work but go much further than the examination of spoilage samples. An outstanding example of work on special problems is the field laboratory work which has been under way for several years. At first, in studying the sources of spoilage bacteria, this was properly regarded as fundamental research. Now, however, field work consists largely in the application of information that has been developed in the past.

Another example of the growth of "special service" may be found in the relatively new unit for the study of certain problems in food poisoning. This unit has been very closely associated with the investigation department.

Studies on heat resistance continue to be an important phase of the work of the laboratory. The trend of work, however, has changed somewhat from former years. During the early part of the year, work was done on a new method and this will be continued when the press of seasonal work diminishes.

One very important observation was the fact that by the use of the supercentrifuge it was possible to fractionate a crop of bacterial spores into fractions of different resistance. This is a matter of fundamental significance, but beyond that the method provides a very useful tool because we now have a method for obtaining for field experimental packs spores of the resistance desired.

Field work has begun and a study on asparagus is in progress. This will be followed with investigations on corn, peas, and pumpkin. It is expected that the field laboratory will be in constant use for the next three or four months.

Study of Enzymes

One of the outstanding characteristics of succulent vegetables, and to a much less extent of fruits, is their enzymic activity. The more succulent—that is, the more young and tender—the vegetable, the greater is the enzymic activity. The heating of corn in a pile and peas in a lugbox and the development of off flavors in peas and lima beans after vining are all consequences of enzymic activity. At present there is no other known method than heating to completely inactivate the enzymes. Since the enzymes are a constituent of each plant cell, any method to accomplish this must act upon every plant cell in the product. The laboratory is conducting experiments with a view to developing some method of controlling the activity of the enzymes other than the application of heat.

Blanching of Peas in the Can

To secure the best flavor in canned peas, certain undesirable flavor constituents must be extracted in hot water prior to canning. By blanching in bulk, as is customary, the water soon becomes laden with extractives and therefore loses its efficiency. Moreover, contamination with spoilage organisms may result. Handling the peas softened by the blanch also results in broken peas in the can. Blanching peas in the can in which they are to be processed has a corrective effect on each of these difficulties. Active experimental work will therefore be conducted during the coming pea season and cooperation is planned with several canners who have expressed their intention of setting up a line in accordance with this plan.

Tomato Juice Manufacture

Tomato juice canners who may be contemplating changes in their methods of manufacture wish, of course, to insure that any change that may be made will provide for the conservation of the vitamin C content, and the laboratory plans to cooperate with such canners in working out efficient procedures in this respect.

Changes in Cut Corn

Interest has been shown in cutting corn at so-called cutting stations and transporting it to central factories for canning. Due to active enzymic changes that take place in corn under such conditions, it is important to know how these may be held down to a minimum. The laboratory plans to make such a study during the coming corn season.

Oxidation of Vitamin C

Many determinations of vitamin C are being made in various laboratories by the so-called chemical titration method. Data are available to show that this method of determining vitamin C does not accurately correlate with the feeding method for determining it, but that the two may be in the same order for at least some products. So long as canned foods in storage remain unopened, no loss of vitamin C is shown by either the titration or the feeding method. When canned tomatoes are opened and stored for 24 hours at room temperature in a layer about one-half inch deep, they lose practically all their vitamin C content as determined by the titration method. Experiments are now under way to determine whether a comparable loss is shown by the feeding method.

Canned, Home-cooked and Raw Food Diet

It has previously been shown that when these three diets are fed over several generations better bone formation results from the canned food diet. While these experiments involved hundreds of animals on each diet, they all originated from a few on each diet, and it therefore can be argued that heredity played a part in the results. During the past two years twelve separate experiments have been conducted, in each of which six or more animals were fed on each diet over the major growing period. In each of the twelve experiments there was distinctly better bone formation in the animals on the canned food diet.

Testing of Derris Root

A number of pea canners are carrying on field experiments with preparations of derris root. The insecticidal strength of these roots varies greatly. Experiments with insecticide should be based on a definite insecticidal strength of the preparation used, and the laboratory has examined a number of samples of the products purchased for these experiments. The analytical methods for the determination of the insecticidal strength are not entirely satisfactory and these are being studied. Some of the lots tested were below the declared strength.

McNary-Mapes Standard for Canned Peas

The new standard for canned peas recently issued raises the question of the status of standard Alaskas. Examination by the laboratory of a number of samples indicates that some lots which have been considered immature will not meet the new tests. The new gravity separation test seems to follow closely the alcohol insoluble solids so that canners may use the brine separation test only. Additional work is being done on this point.

Descriptive Labeling Investigations

Examination of the 1935 experimental packs of peas for the Labeling Committee of the Pea Section has been completed and the results reported to that Committee. The laboratory has been requested to prepare and examine additional samples, and this work will be carried out as extensively as possible.

Additional experimental packs of canned whole grain corn have been requested and plans are being laid to prepare these during the 1936 season. Samples of cream style corn will be taken from commercial packs and examined.

The Green and Wax Bean Section at the last convention requested the laboratory to prepare and examine experimental packs of canned beans similar to those prepared for the corn and pea committees. Plans are under way to do this during the coming season.

Study of Pitted Red Cherries

The laboratory has also been requested to conduct experiments to show the variation in natural sugar content of the cherries, and on the effect of variations in the put-in weight of cherries, the strength of syrup used and different canning treatments on the drained weight, cut-out Brix and quality of the finished product. This will be done in two or three districts this year.

Raw Products Bureau

Pea Aphid Control

In accordance with the memorandum between the Committee on Pea Aphid Control and the Secretary of Agriculture, the Bureau of Entomology has carried on work with derris spray during the winter and spring for the purpose of developing more definite information regarding the value of derris for control of the pea aphid. This work has been financed from the fund supplied to the committee by canners and seedsmen.

While considerable additional information has been accumulated, no satisfactory or conclusive large-scale experiments have been completed because of absence of suitable infestations in the territory where work was undertaken. The Bureau of Entomology has prepared a memorandum of information on this project, giving an account of the work done up to date, and copies are available to those interested.

As noted elsewhere, the Association's laboratories have made provision to test for rotenone content samples of derris delivered by manufacturers.

Testing of Sweet Corn Hybrids

Plans have been worked out whereby the testing and comparing of Golden Cross Bantam produced by various seed firms will be repeated this season by Glenn M. Smith of the Bureau of Plant Industry and Purdue Experiment Station. These tests will be made at Lafayette, Indiana. A committee of Golden Cross Bantam producers representing the seed trade has been organized to cooperate with the Department of Agriculture through Mr. Smith, in maintaining the purity of this hybrid. Under the procedure that has been approved,

the Department of Agriculture and the Purdue Experiment Station will maintain production of the inbred parents of Golden Cross Bantam and supply these inbreds in small quantity to each producer each year. In addition to the work of the Department of Agriculture, the New York Agricultural Experiment Station will conduct a field test of Golden Cross Bantam representing all seed sources furnishing seed in that state. These will be identified in the field as to source and will be compared as to uniformity and trueness to type. At several experiment stations a considerable number of the newer hybrid and top-crossed sweet corns will be grown and compared as to yield, season and uniformity of maturity and other characters. In at least one test, comparisons of canning quality will be included through cooperation by the experiment station, the can company, and an interested canner.

Southern Tomato Plants

The growing of tomato plants in the south for setting canners' acreage in the north has increased rapidly in recent years, principally in southern Georgia where there are this season between 5,000 and 6,000 acres of tomato plants. Since canners first began to use southern plants there have been recurring instances of crop losses due to plant diseases. In many cases the seedling plants from the south have been infected with disease when received in the north.

To remedy this situation and to protect the market for plants, the Georgia authorities two years ago organized a system of plant certification. This was based on the certification of seed sent to Georgia by state agencies in the states in which the seed was grown. In addition to requiring seed certification, the Georgia system also provides for approval of land on which plants are to be grown and compliance by growers with a spraying program designed to prevent development of disease and insect injury in plant fields.

Recently the Georgia plant pathologists, on the basis of laboratory examination, concluded that much of the certified seed sent to Georgia was already contaminated with disease organisms. By treatment or retreatment of the seed with mercuric chloride or other materials, these organisms may be destroyed. Many pathologists do not regard the Georgia findings as conclusive, and the issue was therefore drawn as to whether disease on Georgia seedlings developed from local sources or whether it was carried to the Georgia fields on northern seed.

The Georgia officials called a conference at Tifton, Georgia, May 11th and 12th to consider procedure for the 1936-37 season. This was attended by plant pathologists and seed certification officials from the states using the major proportion of Georgia's plant output. It was shown at the conference that the state certification agencies are unwilling to certify that seed is free from disease organisms, according to the Georgia methods of examination. The Georgia officials therefore agreed to accept certified seed as heretofore as the basis of their own plant certification system. They will continue, however, to test seed and if found contaminated a recommendation will be made to the plant grower that the seed be treated. An effort will be made by the Georgia officials to give necessary supervision to such local seed treatment. If the grower ignores the recommendation, his plants may be ineligible to certification because of the presence of disease.

Meantime, research will be carried on to develop more acceptable methods for examination of seed for presence of disease organisms and to determine the extent to which diseases may over-winter in Georgia soils and in plant refuse. Such research will be greatly facilitated if the federal appropriation for this work, in requesting which the Association joined the Georgia officials and the plant certifying agencies of a number of interested states, is granted to the Department of Agriculture by the Congress now in session.

Agricultural Research Bulletin

The Bureau has received many expressions of approval from Association members and experiment station workers with respect to the publication "Agricultural Research Relating to Canning Crops," released late in January. Additional copies have been supplied to field men requesting them. The distribution of this publication to agricultural research workers has emphasized the service the Bureau renders in providing a clearing house for information on crop problems and in suggesting new lines of investigation which need to be undertaken. As a direct result of the distribution of this bulletin, expressions have been received from experiment station workers in 32 states indicating both their interest in the agricultural problems of the canning industry and their desire to receive suggestions as to how their research in this field may be strengthened.

Canners' Schools

Increased interest in the canners' and fieldmen's schools as a means for getting better crop production methods into actual practice is shown by the addition of Michigan and Utah to the list of states where such schools are held under the auspices of the state college of agriculture. The Director of the Bureau took part in the schools held in Michigan, Ohio, Indiana, and New York State.

Field Work

The work now in progress in the agricultural experiment stations and in the U. S. Department of Agriculture on production problems relating to canning crops is perhaps greater at this time than ever before. Much of this work involves field experiments. In accordance with the general outline of work submitted in January, time will be devoted during the coming season to a study of these field experiments and to consultations with experiment station officials with reference to current and future investigations. Many canners have requested that the Director of the Bureau visit their territories in order to advise with their field men and those in charge of crop production. The field trips will be so planned as to meet as many of these requests as possible.

Division of Statistics

Since the first of the year the Statistical Division, besides carrying on its regular work on stocks and shipments of various commodities, has compiled the annual figures on the 1935 pack of fruits and vegetables; completed the compilation of figures obtained through a special questionnaire on

investment, taxes, payrolls, etc., of the canning industry in 1935; handled requests from about eighty firms with reference to the proposed cost accounting system, and continued work on the bulletins on canner-grower relations as planned by the Committee on Statistics and Information. What may be termed the service work of the Division, that is, responses to requests from individual members for statistical information, is steadily increasing. In addition the director of the Division has attended a number of meetings of state canners associations to discuss the value of statistics to the industry, the proposed cost accounting system, and the relations of canner and grower.

Stocks and Shipments Statistics

The statistics of stocks in canners hands and shipments from canners' warehouses have been compiled for the industry and reported to canners in accordance with the policy and schedule previously approved. Reports are now being made on corn, peas, tomatoes, snap beans, beets, lima beans, mushrooms, and red pitted cherries. Corn and red pitted cherries are reported monthly, the remainder quarterly. A number of requests have come from canners of peas and tomatoes for more frequent reports on the stocks and shipments of these two commodities. The Division of Statistics is willing to provide reports of this nature as frequently as desired by the canners. If, however, these other two commodities were placed on a monthly basis, the work could probably not be handled by the present staff.

Annual Pack Reports

During February and March, the pack statistics on canned vegetables for 1935 and for previous years were prepared for publication in Bulletin 115-A—Part 1. During April and May the fruit pack statistics for 1935 and previous years were compiled in standardized form and prepared for publication as Part 2 of Bulletin 115-A. This latter bulletin is now on the press.

Canning Industry in 1934

Statistics of a general nature relating to the canning industry have been completed for the year 1934. These data, which have not been published, include: 1934 pack of fruits, vegetables and specialties, by states and size of containers; the value is also given; value of raw products purchased from farmers by canners, by states; total payroll of the canning industry, by states, for 1933 and 1934; number of persons employed by the canning industry.

Statistics on Investment, Taxes, Payroll, etc.

Last fall a number of interested canners requested that the Division assemble statistics which would show the magnitude of the canning industry in the United States. As a result the Division sent out requests for data on investment in land, buildings, and equipment; taxes, federal, state and local; insurance; number of growers; value of perishable and non-perishable produce; number of persons employed; amount of payroll, etc. About 50 per cent of the operating canners returned reports by the first of January. A number of others wrote stating that they could not make a report until their books were closed at the end of the 1935 season which, in most cases, ended March 31. To date reports have been received from canners who packed about 65 per cent of the volume in 1935. This sample has been used as a basis for calculating statistics for the entire industry. The data have been prepared to show the statistics by states.

Cost Accounting

Last year the Division prepared a cost accounting system which has been proposed for use in the canning industry, and this system was presented and explained to a few section groups at the convention. Since the convention requests to send the classification of accounts, together with explanations for its use have been received from about 80 firms. The setting up of a system of cost accounts is only the first step toward the interest of those firms in the industry who do not keep adequate accounts. A more important phase is that of selling the idea to these canners. The requests from the 80 firms referred to above were made voluntarily. If we expect to reach the large group of small canners who do not keep adequate accounts, we should direct our efforts toward carrying this work to the canner rather than waiting for him to come to us.

Canner-Grower Relations

Bulletins on five commodities in page proof form were presented to the Committee on Statistics and Information at the time of the convention, and prepared as a part of the general study on the canner-grower relations. The bulletin on tomatoes and tomato products was revised and published at the convention. Since the convention revisions of the other four bulletins have been discussed and new material prepared. At the Committee's meeting in Washington on April 8th, a different form of presentation was approved. Since that meeting the bulletin on canned peas has been revised to conform to the Committee's recommendation.

Home Economics

As a result of the distribution of the bulletin of the Home Economics Division entitled "Consumer Education"—an outline of the field in which the staff of the Home Economics Division is working—the members of the National Canners Association and the distributors and their organizations have requested leaflets, recipe bulletins and individual recipes to a much greater extent than in any other five months period in recent years.

Requests for large numbers of the publications of the Division have been received from the trade in 16 states, the most thickly populated sections of the country. One organization, for example, wanted the leaflets to distribute at a state retail grocers association; another wanted them to distribute at a state restaurant association meeting; a state canners association wanted recipe material to use in the follow-up of a radio campaign.

Besides the response from the trade, additional requests for "Consumer Education" have been received from professional groups, home economics women in business, home service directors of the utilities companies, clubwomen, and magazine and newspaper editors.

Distribution of 42 complete sets of pamphlets has been made to the Home Service Department of the London (Eng-

land) Gas, Light and Coke Company, at the request of their home service director.

The chairman of the homemakers' division of a state federation in the Middle West asked to have a supply for all her district chairmen, numbering 55. As a result of this particular distribution one of these leaders, who is state chairman of the Parent Teachers Association in that area, has asked for a series of talks to be given in the Fall of 1936.

Publications

New publications authorized in January are either ready for the printer or are in course of preparation. To continue the series of commodity leaflets started last year with peas, corn and tomatoes, a leaflet on pitted red cherries has been issued. This will be followed by others dealing with pears, peaches, berries, apricots and plums. Another series of leaflets will feature special occasions, such as Halloween, Thanksgiving, Christmas, and other holidays. A pamphlet entitled, "The Story of the Canning Industry," with a reference list for students, is ready for distribution.

Field Work

Since the first of the year Miss Atwater has attended the State Farm and Home Week conference at Cornell and the meeting of the Georgia State Dietetic Association, also visiting the Georgia State College for Women, University of Georgia and the Florida State College for Women. Miss Black spoke at a meeting of the American Association of University Women at Poughkeepsie, participated in the Women's Pageant of Progress at Chicago, and made visits to the food editors of 36 newspapers in 14 different cities. Many requests have come from newspaper and magazine editors asking for information regarding canned foods, and these visits were for the purpose of learning at first hand the kind of information that these writers are most interested in receiving with respect to the canning industry's products.

The directors of the Division plan to attend the annual convention of the American Home Economics Association in Seattle, and enroute to and from this meeting will be able to make visits to educational institutions and extend personal acquaintances with writers in the newspaper and magazine field.

Since the first of the year Miss Atwater and Miss Black have each contributed articles for publication in various journals and have made radio addresses—all, of course, having to do with the canning industry and its products.

State Associations Represented

State associations represented at the meeting included:

Association of New York State Canners, Inc.
Canners League of California.
Eastern Shore of Virginia Canners Association.
Florida Grapefruit Canners Association.
Illinois Canners Association.
Indiana Canners Association.
National Kraut Packers Association.
Maine Canners Association.
Michigan Canners Association.
Northwest Canners Association.
Ohio Canners Association.
Ozark Canners Association.
Pennsylvania Canners Association.
Tennessee-Kentucky Canners Association.
Tidewater Canners Association.
Tri-State Packers Association.
Utah Canners Association.
Virginia Canners Association.
Wisconsin Canners Association.

HOLD RELIEF ACT INVALID

Decision of Court of Appeals for District of Columbia Halts Housing Project

In the opinion rendered by the United States Court of Appeals for the District of Columbia last Monday the Emergency Relief Appropriation Act of 1935, which appropriated $4,800,000,000 for various relief projects, was declared invalid. The case involved the constitutionality of the proposed plan of the Resettlement Administration to build a "model community" in the Township of Franklin, New Jersey.

Employing extremely broad language, the Court declared that the statute was invalid because it delegated unlimited authority to the President, and that the particular project was unconstitutional because Congress itself was wholly without authority to provide for the resettlement and redistribution of low-income members of the industrial population. Relying on the *Hoosac* case, which invalidated the A. A. A., the Court concluded that such a plan was an invasion of the reserved powers of the States and thus a violation of the Tenth Amendment.

It found no justification for the activity in question in the general welfare clause of the Constitution, which it interpreted to require that the general welfare involved must be national in scope, and the means employed to attain the end must be plainly adapted thereto and be not prohibited.

The Court was also of the opinion that the provisions of the Relief Act constituted an unlawful delegation of legislative power within the decisions of the Supreme Court in the N. R. A. cases (*Schechter* case and *Panama Refining Co. v. Ryan*). The Relief Act merely appropriated this large sum of money earmarked for such vague purposes as "housing". No standards to determine the manner in which the money was to be spent, or the meaning of "housing" were laid down. This was left to the "unfettered" discretion of the President, a method described by the Court as "delegation running riot".

The actual decision is of course limited to the constitutionality of the particular housing project which was enjoined. The broad language of the Court, however, and particularly the portion of the opinion dealing with delegation of legislative power, throws grave doubt upon the validity of various other New Deal relief projects under the same statute. An appeal to the Supreme Court from the decision of the Circuit Court of Appeals is open to the Government.

Buying Guide for Fruits and Vegetables

The U. S. Department of Agriculture has issued as Miscellaneous Publication No. 167, a 62-page bulletin entitled "A Fruit and Vegetable Buying Guide for Consumers." It presents general information on grades, deterioration of fruits

and vegetables, and prices, as well as hints on the buying of 24 fruits, 42 vegetables, and 6 melons. The bulletin is a revision of an earlier publication issued in 1933.

TRADE AGREEMENT WITH FINLAND

Duties on Various Canned Foods Reduced by Agreement Signed May 18th

The United States and Finland signed at Washington on May 18th a trade agreement which is the fourteenth negotiated under the Trade Agreements Act of June 12, 1934. It is the sixth to be concluded with a European country.

The agreement must be approved by the Finnish Diet and will come into full force for an initial term of three years on the thirteenth day following proclamation thereof by the President of the United States and approval thereof by the President of Finland.

American-Finnish trade relations are at present regulated by the provisions of the treaty between the United States and Finland signed at Washington on February 13, 1934, which provides, among other things, for unconditional most-favored-nation treatment for the trade of each country in the territory of the other. The present agreement does not affect the rights and obligations of the two countries under this treaty, but several articles have been included in the agreement to define more precisely the meaning of most-favored-nation treatment in connection with new practices in international trade.

By the terms of the agreement Finland has reduced the duty on the following agricultural products of interest to canners (at present rates of exchange one Finnish mark per kilo equals almost exactly one cent per pound):

Canned pineapples, pears, peaches, apricots, mixed fruit for salad and grapefruit.—Duty on these products is reduced from 10 to 6.50 Finnish marks per kilo. The rate of 10 Finnish marks per kilo has been in effect for a number of years and has been at times equivalent to over 90 per cent ad valorem.

Canned asparagus.—Duty reduced from the present rate of 10 Finnish marks to 6.50 Finnish marks per kilo.

Fresh apples.—A reduced rate of 1.50 Finnish marks per kilo will apply to American apples imported during the period December 15th to June 15th of each year. This represents a reduction of 75 per cent from the present rate of 6 Finnish marks per kilo in effect during the period December 15th to December 31st, and a reduction of 50 per cent from the present rate of 3 Finnish marks in effect during the period January 1st to June 15th. The period during which the lowered duty operates will permit entries to be made in time to participate in the holiday trade.

Fresh pears.—Duty of 1.00 Finnish mark per kilo is bound by the agreement.

Grapefruit.—Duty is reduced from 1.00 Finnish mark to 0.50 Finnish mark per kilo.

Raisins.—Duty is reduced from 1.00 Finish mark to 0.50 Finnish mark per kilo.

Prunes.—Duty of 1.37 Finnish marks per kilo is reduced to 0.70 Finnish mark per kilo.

Dried apricots, peaches, pears and mixed fruits.—The duty on these products has been 6.00 Finnish marks per kilo since 1932. The agreement reduces the duty by 50 per cent or to 3.00 Finnish marks, the rate that was in effect in 1930 and 1931.

Necrology

Thaddeus G. Searle at Bronxville, N. Y., May 18th, aged 52; general sales manager of the Continental Can Co., with which firm he had been associated for twenty-one years; vice president of the Canning Machinery and Supplies Association.

Civil Damage Suit Against Federal Officials

Under date of May 20th the U. S. Department of Agriculture announced that the claimant in a seizure action brought under the Food and Drugs Act, which was not sustained by the Federal Court, had brought a civil suit for damages against certain Administrative officials of the Department of Agriculture.

This suit for damages resulted in a hung jury, and, according to the statement of the Department of Agriculture, "is of vital interest to every consumer since in its larger aspects it involved the question as to whether a Federal officer, in the discharge of his official duties under the Food and Drugs Act, can be held personally liable for damages for reporting facts to his superiors in the event of an adverse court decision under the Food and Drugs Act."

Fruit and Vegetable Market Competition

Carlot Shipments as Reported by the Bureau of Agricultural Economics, Department of Agriculture

	Week ending			Season total to	
	May 16 1935	May 16 1936	May 9 1936	May 16 1935	May 16 1936
VEGETABLES					
Beans, snap and lima	481	377	422	7,589	5,757
Tomatoes	773	1,123	896	9,598	7,554
Green peas	325	336	372	3,030	3,473
Spinach	59	44	178	5,411	7,373
Others:					
Domestic, competing directly	4,941	4,790	6,196	134,568	145,284
Imports competing—					
Directly	4	1	1	188	265
Indirectly	3	2	1	78	147
FRUITS					
Citrus, domestic	3,946	2,902	6,474	100,439	89,495
Imports	6	15	17	315	530
Others, domestic	1,064	1,125	1,334	23,391	21,109

WHAT'S DOING IN CONGRESS

Status of Legislation That is of Interest to Canning Industry

Congressional leaders have announced that Congress will adjourn Saturday, June 6th, and strenuous efforts will be made to get the tax and relief bills through by that date. Both measures will be brought up in the Senate during the coming week, so that there will be somewhat less than two weeks for debate. Doubts are being expressed that the Senate can be rushed to that extent and already there are rumors that instead of adjournment there will be a recess over the time required for the Republican convention. The

fate of the Patman and Copeland bills depends on the speed with which they can be handled.

Following is some account of the developments that have taken place since the date of legislative review printed elsewhere in this number of the INFORMATION LETTER.

Price-Discrimination Bills

After prolonged hearings, the House Rules Committee has agreed to allow the Patman bill to come up for consideration next Tuesday, May 26th. The vote will probably come on the 27th and is expected to be favorable. If Congress adjourns on June 6th, as planned, this will leave only about ten days for the House and Senate conferees to agree on some compromise and get it approved by both Houses. Proponents of the bill are somewhat worried about the possibility of getting the bill out of conference in time.

Tax Bill

On May 30th the Senate Finance Committee definitely agreed to retain the present corporate income tax, but at the rate of 18 per cent. Instead of the House tax up to 42 per cent on undistributed surplus, the Finance Committee has agreed on a flat rate of 7 per cent. The present capital stock tax is to go into the Senate bill, together with a tax of $1.40 per thousand on excess profits. The House provision for applying the normal income tax rate to dividends is retained, and the Committee decided not to change the present normal rate. At the time the INFORMATION LETTER goes to press these changes have been agreed to by the Committee, but there may be last minute changes in the Committee and there is, of course, a chance that further changes will be made on the floor.

Copeland Bill

The Copeland bill was reported to the House on Friday afternoon. Aside from amendments referred to in the article on page 4946, a change of great interest to canners is the authorization for the Secretary of Agriculture to establish "*definitions* and *standards* of identity and reasonable *standards* of quality and fill of container." As passed by the Senate, the bill provides for "a definition and standard of identity and a reasonable standard of quality and/or fill."

Status of Other Bills

Fair Trade Bill.—The Tydings bill (S. 3822) has been reported favorably to the Senate by the Judiciary Committee. Unless it can be brought up before the Senate takes up the tax bill, there is little chance of its coming to a vote.

Government-Contracts Bill.—At a meeting on May 20th the House Judiciary Committee agreed to take up again the subject of including wage and hour requirements in government contracts. It is possible that the Committee will undertake to draft a new bill rather than revive the Healey bill, which was recently tabled.

New Coal Bills.—Bills have been introduced in both Houses to legalize the price-fixing provisions of the Guffey Act, which were not passed upon separately in the Supreme Court decision. The labor provisions of the invalidated Act are not included in the new bills. There will be considerable pressure to get these bills through before adjournment, with chances very uncertain.

COAL ACT UNCONSTITUTIONAL

United States Supreme Court Declares Law to Regulate the Industry Invalid

In a sweeping decision rendered May 18th the Supreme Court declared unconstitutional the Bituminous Coal Conservation Act, commonly called the Guffey Act, passed by Congress last summer. The Act, which was one of the most controversial of New Deal measures, imposed a tax of 15 per cent on the value of all coal mined, but remitted 90 per cent of this amount to producers who accepted the provisions of a code to be promulgated. A National Coal Commission was established, which was invested with power to fix minimum prices to be charged for coal. Part III of the Act provided that standards of maximum hours and minimum wages could be fixed by the action of two-thirds of the producers, these standards to be binding on all acceptors of the code. The day after the Act became effective stockholders of several coal companies brought suit to enjoin the directors of the company from complying with the provisions of the Act.

Five of the Supreme Court justices thought that the Act was invalid in its entirety. They concluded that the stockholders could maintain suits of this character and that the actions were not prematurely brought. The exaction of 15 per cent was declared to be a penalty and not a tax, and thus sustainable only as a penalty for failure to comply with a regulation based upon the power to regulate commerce. These justices concluded that the mining of coal is a matter of purely local concern, not interstate commerce, and does not directly affect interstate commerce. Mining is thus beyond the scope of the regulatory power of Congress. The labor provisions of the Act were accordingly declared invalid. An additional basis for this holding of invalidity was found in the provisions for establishing standards of hours and wages which the Court held an arbitrary and unwarranted delegation of legislative powers to two-thirds of the producers who could establish standards, and therefore a violation of the due process clause.

The majority concluded that the provisions of the Act were inseparable, and, without considering the validity of the price-fixing provisions, declared that they must fall with the remainder of the Act.

Chief Justice Hughes agreed with the majority on all points except as to whether the price provisions could be separated from the invalid labor provisions. He thought the former were valid and separable, and that they should therefore be allowed to stand.

Justices Cardozo, Brandeis, and Stone dissented from the conclusions of the majority, and in an opinion written by Mr. Justice Cardozo found no reasons why the Act should not be allowed to stand insofar as it regulated coal prices. They were of the opinion that the price-fixing provisions were valid and separable, and this being true the penalty for failure to accept the code could validly be exacted. They concluded that any consideration of the validity of the labor provisions at the present time would be premature inasmuch

as no steps to carry them into effect had been taken, nor was there any assurance that any would ever be.

It is thus apparent that the only point upon which there was any expressed difference of opinion among the justices was the question of separability of the various provisions of the Act. By taking different views on this issue and adopting a different approach the majority and minority reached widely divergent opinions.

The decision does establish, however—and this is not expressly controverted by the minority—that the power of Congress over interstate commerce does not extend to the regulation of purely local matters such as mining and manufacturing. These do not constitute interstate commerce, and the mere fact that the products of these activities are eventually to be shipped in such commerce is not such a "direct effect" as will justify the exercise of the regulatory powers of Congress. The opinion of the Court in the *Schechter* case involving the constitutionality of the N.R.A. is thus affirmed and followed. The only distinction is that this case deals with activities before interstate commerce begins whereas the *Schechter* decision involved regulation after commerce had ceased. The majority thought this distinction was without significance.

This portion of the Court's opinion throws grave doubts upon the validity of the National Labor Relations (Wagner-Connery) Act which attempts to regulate labor relations in local industries on the theory that they directly affect interstate commerce.

There seems to be nothing in the opinion affecting the constitutionality of the Social Security Act. The approval of stockholders' suits as a method of testing the constitutionality of laws before attempts to enforce them have been made, possibly shows a manner in which that Act may be attacked without waiting for the taxes to become due next January.

Mr. Justice Sutherland writing the opinion of the majority, after affirming the right to maintain the suits and that the exaction of 15 per cent was a penalty sustainable only as a regulation of commerce, pointed out that this statute could therefore be sustained only insofar as it was a valid regulation of interstate commerce, and after reviewing the cases defining such commerce, concluded that mining was not included therein:

"We have seen that the word 'commerce' is the equivalent of the phrase 'intercourse for the purposes of trade'. Plainly, the incidents leading up to and culminating in the mining of coal do not constitute such intercourse. The employment of men, the fixing of their wages, hours of labor and working conditions, the bargaining in respect of these things—whether carried on separately or collectively—each and all constitute intercourse for the purposes of production, not of trade. The latter is a thing apart from the relation of employer and employee, which in all producing occupations is purely local in character. Extraction of coal from the mine is the aim and the completed result of local activities. Commerce in the coal mined is not brought into being by force of these activities, but by negotiations, agreements, and circumstances entirely apart from production. Mining brings the subject matter of commerce into existence. Commerce disposes of it."

He then concluded that the condition of labor relations in this local industry does not directly affect interstate commerce:

"But, in addition to what has just been said, the conclusive answer is that the evils are all local evils over which the federal government has no legislative control. The relation of employer and employee is a local relation. * * * The employees are not engaged in or about commerce, but exclusively in producing a commodity. And the controversies and evils, which it is the object of the act to regulate and minimize, are local controversies and evils affecting local work undertaken to accomplish that local result. Such effect as they may have upon commerce, however extensive it may be, is secondary and indirect. An increase in the greatness of the effect adds to its importance. It does not alter its character."

In discussing the separability of the price-fixing provisions he declared:

"The conclusion is unavoidable that the price-fixing provisions of the code are so related to and dependent upon the labor provisions as conditions, considerations or compensations, as to make it clearly probable that the latter being held bad, the former would not have been passed. The fall of the latter, therefore, carries down with it the former."

In his dissenting opinion Mr. Justice Cardozo concluded that the price-fixing provisions were a valid exercise of the power to regulate interstate commerce, that they did not contravene the due process clause, and that they did not constitute an unwarranted delegation of legislative powers. He then examined the provisions of the Act and found them to be separable, and without passing upon the validity of the labor provisions, concluded:

"The price provisions being valid, the complainants were under a duty to come in under the code, whether the provisions as to labor are valid or invalid, and their failure to come in has exposed them to a penalty lawfully imposed. They are thus in no position to restrain the acts of the collector, or to procure a judgment defeating the operation of the statute, whatever may be the fate hereafter of particular provisions not presently enforcible. The right to an injunction failing, the suits must be dismissed. Nothing more is needful—no pronouncement more elaborate—for a disposition of the controversy."

* * * * *

"What the code will provide as to wages and hours of labor, or whether it will provide anything, is still in the domain of prophecy. The opinion of the court begins at the wrong end. To adopt a homely form of words, the complainants have been crying before they are really hurt."

CONTENTS

	PAGE
N. C. A. directors meet	4945
Pea crop conditions	4945
Hold Relief Act invalid	4953
Buying guide for fruits and vegetables	4953
Trade agreement with Finland	4954
Necrology	4954
Civil damage suit against Federal officials	4954
Fruit and vegetable market competition	4954
What's doing in Congress	4954
Guffey Coal Act decision	4955